IN THE MATTER OF the
Human Rights Code, 1981,
S.O. 1981, c.53, as amended

AND IN THE MATTER OF the
complaint made by Ms. Daisy Murray
and Mrs. Anne Landrum, of Detroit,
Michigan, alleging discrimination in
services and facilities by the Anchor
and Wheel Inn, Its Servants and Agents,
and Mr. Emanuel Emrich, North Bay Road,
P.O. Box 65, Pelee Island, Ontario

B E T W E E N:

DAISY MURRAY and ANNE LANDRUM
Complainants

- and -

ANCHOR AND WHEEL INN
its wervants and agents and
EMANUEL EMRICH
Respondents

RE: Complaints of Daisy Murray and Anne Landrum dated September 22, 1980

DATE OF HEARING: Tuesday, 23 October 1984

PLACE OF HEARING: Town Hall, Leamington, Ontario

BOARD OF INQUIRY: M. R. Gorsky

APPEARANCES FOR COMPLAINANTS: Mrs. Anne Landrum, in person

APPEARANCES FOR COMMISSION: M. W. Bader
Ministry of the Attorney General

DECISION

On the 2nd day of October, 1984, I was appointed as a Board of Inquiry under the Human Rights Code, 1981, to hear and decide the above-mentioned complaint in accordance with the said Act. (Exhibit 1). At the opening of the hearing, I was informed that one of the complainants, Ms. Daisy Murray, was in the hospital in Detriot, Michigan, where she resides, and could not attend the hearing. Exhibit 4 was filed, being a letter from Ms. Murray's doctor, Dr. Emmanuel Javier, which letter is as follows:

> "This is to certify that Ms. Daisy Murray has been hospitalized since October 10, 1984 at Detroit Receiving Hospital. I am presently managing her as a case of pneumonia and chronic obstructive pulmonary disease. She still needs hospitalization until her medical condition stabilizes and improves."

The other Complainant, Mrs. Anne Landrum, who also resides in the City of Detroit, did attend at the hearing. In her testimony (Evidence at pp.64-5), Mrs. Landrum indicated that she had recently spoken, by telephone, with Ms. Murray, who stated that she was ill and expected to be hospitalized, because of her illness. Mr. M. Witter, an Investigator with the Commission, stationed in Windsor, testified (Evidence, p.47) that he had spoken, by telephone, with Ms. Murray's husband, who advised that Ms. Murray was in the Detroit Receiving hospital, in the Intensive Care unit. Mr. Witter then communicated, by phone, with Ms. Murray, who informed him that she would have to remain in the hospital for some time. As a result of his conversation with Ms. Murray, Mr. Witter obtained Exhibit 4 from Ms. Murray's physician, Dr. Javier.

Mr. Bader, Counsel for the Commission, indicated that it was his intention to proceed with both Complaints and that he

would be relying on the evidence of Mrs. Landrum, the other Complainant, and of Mr. Witter, which evidence, I was informed, would relate to the complaints of Ms. Murray and of Mrs. Landrum.

Mr. Bader filed Exhibit 7, being a Certificate of Status, dated October 13, 1983, issued by the Controller of Records, Companies Branch, Ministry of Consumer and Commercial Relations, Companies Division, of the Province of Ontario, which indicated that the Companies Branch had not endorsed or issued a certificate of incorporation under the provisions of the Business Corporations Act, (Ontario) or a predecessor of that Act, under the name Anchor and Wheel Inn. Mr. Bader also filed Exhibit 8, being a certificate issued for the Registrar of Partnerships, dated October 5, 1983, that, as of the latter date, the Partnerships Registry at Toronto, Ontario, had no record of the registration pursuant to the Partnerships Registration Act under the name Anchor and Wheel Inn. Mr. Bader further filed a certificate of the Deputy Director Consumer and Corporate Affairs Canada, pursuant to the Canada Business Corporations Act, dated, October 18, 1983, that as at the latter date, a search made of the records of the Corporations Branch, Department of Consumer and Corporate Affairs, disclosed no record of the existence of any company incorporated under any Law of the Parliament of Canada, under the name of Anchor and Wheel Inn, and he requested that the Anchor and Wheel Inn be removed from the record as a Respondent. Mr. Bader's request was granted and the amended Complaints are now only against the remaining Respondent, Mr. Emanuel Emrich, who I found to be the Resident Manager of the premises known as the Anchor and Wheel Inn on Pelee Island.

Mr. Emrich did not appear at the hearing. Mr. Bader filed, as Exhibit 5, a letter to the Ontario Ministry of Labour,

attention of Jean M. Read. The following letter, purports to be signed by the Respondent, Emanuel Emrich, who describes himself as "Resident Manager".

OCT 1 0 1984 Exh #5 Oct. 12, 1984

Ontario Ministry of Labour
400 University Ave.
Toronto, Ontario
M7A 1T7

Reference: Case # 20-1864
Case # 20-1863
Files OHR 84-0007
OHR 84-0008.

Attn: Jean M. Read

Dear Ms. Read:

Received your letter dated Oct. 2, 1984, delivered by Hand on Oct. 12, 1984 by Mr. Merv Witter, at about 11:15 a.m.

We are unable to attend the Board of Inquiry, that is to be held on Oct. 23rd, Tues. and Wednesday Oct. 24, 1984.

We advised a women who called about this case, that we are unavailable from Oct. 1 to May 15 each year. We shall be happy to attend an inquiry between May 15 thru Sept. 30 any year.

We had assumed this case was closed since we did not hear from you a whole year. If justice is to be served, please do not wait a year to schedule a new hearing.

Thank you for your cooperation.

Sincerely,

Lawrence Fitzgerald

c.c. See attached list.

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c.c. Mr. George Brown - Executive Director
c.c. Mr. Mervin Witter
Ontario Human Rights Commission
500 Ouellette Ave.
Windsor, Ontario. N9A 1B3

✓ c.c. Mr. M. W. Bader
Ministry of Attorney General.
Crown Law Office, Civil
17th Floor 18 King St. E.
Toronto, Ontario M5C 1C5.

c.c. Ms. Anita Dahlin - Supervisor
South western Region
Ontario Human Rights Commission
205 Oxford St E. 2nd Floor
London, Ontario N6A 5G6.

c.c. Prof. Morley R Gorsky
Faculty of Law
University of Western Ontario
London, Ontario N6A 5G6

Mr. Bader informed me that the date stamp of October 19, found endorsed on Exhibit 5, is that of his office. At the date of hearing, I had not received a copy of Exhibit 5, which is shown to be c.c.'d to a number of persons, including myself. I have, subsequently, received a copy of Exhibit 5, which was mailed to my office. Mr. Bader indicated that it was his intention to request me to proceed to hear the Complaints in the absence of the Respondent. (Evidence p.4) He called Mr. Witter as a witness. Mr. Witter testified (Evidence p.4) that he investigated the Complaints which are before me (Exhibit 2, being that of Ms. Murray and Exhibit 3, being that of Mrs. Landrum). Mr. Witter testified that on October 12, 1984, he attended on Pelee Island for the purpose of serving the Notice of Hearing on the Respondent. (Evidence p.4) Mr. Witter identified the Notice of Hearing, which is dated October 2, 1984 (part of Exhibit 6), which is as follows

"**Re: Board of Inquiry:**

Ms. Daisy Murray — **Case No.: 20-1864**
Mrs. Anne Landrum — **Case No.: 20-1863**
and The Anchor and Wheel Inn,
and Mr. Emanuel Emrich

"With reference to the above-mentioned matter, this is to advise you that the Honourable Russell H. Ramsay, Ontario Minister of Labour, has appointed Professor Morley R. Gorsky, Faculty of Law, University of Western Ontario, London, Ontario, as a Board of Inquiry to hear and decide the complaint in accordance with section 37 (1) of the Human Rights Code, 1981.

Counsel for the Commission will be Mr. M.W. Bader, Ministry of the Attorney General, Crown Law Office, Civil, 17th Floor, 18 King Street, East, Toronto, Ontario, M5C 1C5; telephone: (416) 965-2556.

The hearings will be held on Tuesday, October 23rd, and Wednesday, October 24th, 1984, at 10:00 a.m. each day, at The Leamington-Mersea Municipal Building, 38 Erie Street, North, Leamington, Ontario, in the Council Chambers, and take notice that if you do not attend at the hearings, the Chairman may proceed in your absence.

Enclosed please find a copy of the appointment, and complaint form, together with a copy of The Human Rights Code, for your information. Should you have any questions or require further information with respect to this appointment, please contact Mr. M.W. Bader, Counsel for the Commission, at the above address."

He also identified my appointment and the Complaints of Ms. Daisy Murray and Mrs. Anne Landrum, which he also intended to serve on Mr. Emrich. (Evidence p.5) Mr. Witter stated that he attended to effect service, along with Corporal Brian Mikstas, who was attached to the Essex Detachment of the O.P.P. It was Mr. Witter's evidence that he was personally acquainted with Mr. Emrich, as a result of previous contacts with him in connection with this case. Service was effected on Pelee Island at the premises known as the Anchor and Wheel Inn, being a motel business, apparently being run by the Respondent and his wife. Mr. Witter testified that, at the time he served the above documents on Mr. Emrich, there were present, in addition to himself, Corporal Mikstas, Mr. Emrich and Mr. Emrich's wife. (Evidence p.7) Mr. Witter testified that he was familiar with Mrs. Emrich, whose first name he could not recall, as he had met her on previous occasions. (Evidence p.7) Mr. Witter stated that he informed Mr. Emrich that the purpose of his attendance was to serve Mr. Emrich with the Notice of this Hearing. At this point, Mr. Emrich is alleged to have said that, "I'm not going anywhere. They waited a year. I'll be busy. You tell them to go to hell." (Evidence p.7). Mr. Witter testified that he asked Mr. Emrich if he had received a call from "the arbitrator's office". Mr. Emrich is said to have replied, "Yes, but I told the woman I'll be away at that time." (Evidence p.8) Mr. Witter stated that he then served "The covering letter on the document, as well as the Notice of the Hearing to him". (Evidence p.8). Mr. Emrich is then reported to have said, "You take it back and go tell them to go to hell. I won't be there. Since I waited for a year, they can wait on me ... so you take it back because I'll be busy". (Evidence p.8) The reference to the "arbitrator's office" was to the Ontario

Ministry of Labour, Office of Arbitration and its Director, Jean M. Read. Mr. Witter testified that he then informed Mr. Emrich, that if he had any difficulty he could call either "the office of arbitration or Mr. Bader's office". (Evidence p.8) Mr. Emrich is said to have replied, "No you take it back, and you call them." (Evidence p.9). Mr. Witter stated that he left the letter and the other documents comprising Exhibit 6 (Notice of Hearing, my appointment and the Complaints) on a kitchen table. (Evidence p.9) At that point, according to Mr. Witter, Mr. Emrich picked up the documents comprising Exhibit 6 and commenced to examine them,after which his wife took the documents from him. At this time, Mr. Witter left the premises of the Anchor and Wheel Inn. (Evidence p.9).

Mr. Witter stated that Mr. Emrich had threatened him with harm during previous meetings relating to these complaints. Mr. Witter concluded that he required the assistance of an O.P.P. officer, should the need for protection arise. (Evidence p.10).

Before returning to the mainland from Pelee Island, Mr. Witter made inquiries with the ferry transportation service,to and from the Island, to ascertain if there were reservations avilable for anyone wishing to come from the Island to the mainland and back on October 20,21,22,23 and 25, 1984. Mr. Witter said he spoke to Ms. Janet Cascarden, who operates the transportation service between Pelee Island and the mainland, and was informed, by her, that reservations were avialable for the above dates. He further testified that the principal access to and from the Island is by the ferry service which operates between Kingsville, on the mainland, and

Pelee Island. (Evidence p.11) The ferry trip between Pelee Island and Kingsville takes approximately an hour and fifteen minutes and furnishes transportation for individuals and vehicles. (Evidence p.12).

I am left with no reasonable doubt that the person who was served by Mr. Witter, with the Notice of Hearing and the other documents comprising Exhibit 6, was the Respondent, Emanuel Emrich. The evidence discloses (p.17) that on previous occasions, the person served as Emanuel Emrich, identified himself as being Emanuel Emrich and showed Mr. Witter a driver's licence in the name of Emanuel Emrich. In addition, when Mr. Witter was in the Town Hall on Pelee Island, the Township Clerk, Mr. Duncan McTavish, identified Mr. Emrich for Mr. Witter. (Evidence p.19).

I am satisfied, from the evidence of Mr. Witter (Evidence pp.25-28), that although settlement discussions took place, they were never completed, as the Commission did not ratify a proposed settlement. I am also satisfied, from Mr. Witter's evidence (Evidence p.29), that Mr. Emrich was aware that no settlement agreement had ever been concluded and that the copy of a proposed settlement agreement left with him was lacking the endorsation of the Commission, which was necessary in order to create a binding settlement agreement.

I was also advised by Mr. Bader that the Complaints were previously intended to be heard in October of 1983, however, a hearing date was not established at that time because of the unavailability of certain Commission witnesses. Mr. Bader stated that his file did not indicate that any Notice of Hearing had been sent out for a date in October of 1983.

I had no evidence before me from the Respondent as to why he would be unavailable from October 1 to May 15, which evidence might cause me to consider granting an adjournment. Following this hearing, there were newspaper reports in a number of Ontario newspapers based on alleged interviews with the Respondent, on either October 23 or October 24, 1984. These reports indicated his intention to ignore the Notice of Hearing. Mr. Witter testified (Evidence p.37) that the Respondent told him that he goes away for an annual vacation in Florida and that might be the basis for the statements found in Exhibit 5, that the Respondent would not be available from "October 1 to May 15 each year." I do not regard this as a reasonable basis for the Respondent's not attending the hearing.

Mr. Bader informed me that Mr. Emrich had told him, during a telephone conversation which took place at about 3:00 p.m. on October 12, 1984 (Mr. Bader had made notes of the conversation), that he "could not get off the island on [the scheduled hearing dates] because the ferry service was all booked up." The evidence of Mr. Witter, above referred to, indicates that ferry service was available. Mr. Bader also stated that he informed Mr. Emrich, during the previously noted telephone conversation, of the fact that the Notice of Hearing contained a warning that the hearing could continue in his absence. Mr. Bader also advised Mr. Emrich to consider retaining counsel. At this point, Mr. Bader requested that Mr. Witter make inquiries concerning the availability of ferry service. (Evidence p.38)

Section 6 of the Statutory Powers Procedure Act, requires that parties be given reasonable notice of a hearing and that such

notice include: The time, place and purpose of the hearing; a reference to the statutory authority under which the hearing will be held (in this case the Ontario Human Rights Code) and a statement that, if the notified party does not attend, the board may, proceed in his or her absence without further notice.

Section 7 of the Act provides that:

> "Where notice of a hearing has been given to a party to any proceedings in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in his absence and he is not entitled to any further notice in the proceedings."

The Notice of Hearing (part of Exhibit 6), which was served on Mr. Emrich, fulfills the requirements of s.6 of the Statutory Powers Procedure Act. Mr. Emrich has evidently made a conscious decision not to attend this hearing. I can find no basis, on the evidence, for adjourning the hearing for the purpose of either giving Mr. Emrich a further opportunity to attend or for compelling his attendance. I would have preferred that all parties be present at the hearing, however, there is nothing in s.21 of the Statutory Powers Procedure Act, which would move me to grant an adjournment on my own motion. Nor has it been shown, to my satisfaction, that an adjournment would be required to permit an adequate hearing to be held.

Mr. Witter testified (Evidence p.48) that the Anchor and Wheel Inn is a large older type of establishment, which he stated appeared to be a two storey mansion (the main building) that had been coverted into a hotel with a main dining room on the lower floor. He stated that, approximately 100 yards

behind the main building, there was another, older (and delapitated) two storey building, with approximately six rooms upstairs and three downstairs. (Evidence p.49) The second building does not have any dining facilities.

Mrs. Landrum testified that, on July 3, 1980, she arrived on Pelee Island with Ms. Murray and two other people (Mrs. Landrum's son Mark Landrum and one Maxine Perry). Her party (all of whom are black citizens of the United States, residing in Detroit, Michigan) had driven, in two automobiles, from Detroit to Leamington and then proceeded to the ferry at Kingsville, which took them to Pelee Island. It was their intention to spend three nights on Pelee Island and to engage in a number of tourist pursuits, such as fishing, sight-seeing and beachcombing. It was the original intention of the members of the party to stay at the Westview Motel, which is located on Pelee Island, with which motel Mrs. Landrum was familiar. Doris Dennis, the Manager of the Westview Motel, told Mrs. Landrum that the motel was fully booked, and suggested that she call Mr. Emrich, in order to secure accommodation, at the Anchor and Wheel Inn. Mrs. Landrum stated that she spoke to Mr. Emrich by telephone and asked if he had any accommodation for the weekend. Mr. Emrich is said to have replied that he did and to have informed Mrs. Landrum that he could accommodate her party. (Evidence p.54) Mrs. Landrum testified that her party then proceeded to the Anchor and Wheel Inn. When they arrived at the Inn, Mr. Emrich identified himself, as did Mrs. Landrum. Mr. Emrich is stated to have informed Mrs. Landrum, at that time, that he had accommodation for her party. (Evidence p.55) Mrs. Landrum then asked to see the accommodation. According

to her testimoney (Evidence p.55) Mr. Emrich showed her throughout all of the facilities in the main building, including the guest rooms, as well as through the other building, identified by Mr. Witter in his evidence. Mr. Emrich is then said to have stated that Mrs. Landrum could have a room in the building away from the main building. Mrs. Landrum testified that the Respondent then stated (Evidence p.55), "You can have this room only, and you cannot eat in your room". He is then suppose to have said, "There is a place outside where you can make yourself some coffee." Mrs. Landrum believed that the Respondent was referring to a barbeque grill or stove which was located outside of the building where the Complainant and Mrs. Perry were to be accommodated. The Respondent then indicated to Mrs. Landrum that there were certain "rules and regulations" to which guests at the Inn were subject. These were explained to her in Mr. Emrich's office, which appears to be located in the main building. Mr. Emrich is suppose to have continued (Evidence p.55-56), "Well, I have got to tell you my rules and regulations. You can't eat in your room and you can't eat in the dining room". He is also said to have stated that Mrs. Landrum and her party could not eat in the dining room: "[B]ecause I have some people coming in here that might not like it, because you know you are black". Mr. Landrum testified that she then informed Mr. Emrich, "I've been knowing that for quite a while". It would appear that at least three of her party were present when Mr. Emrich is said to have again stated that Mrs. Landrum and her party could not eat in the sleeping room and could not eat in the dining room, and that the reason for this restriction was based on the colour of Mrs. Landrum, Mrs. Murray and the other members of

their party. According to Mrs. Landrum, the Respondent believed that the colour of the members of the party might offend other people using the dining room.

At p.56 of the Evidence, Mrs. Landrum stated that she spoke to Ms. Murray and Mrs. Perry, after hearing the Respondent's "rules and regulations," and informed them that she did not "care for his rules and regulations that much." Ms. Murray and Mrs. Perry are suppose to have concurred in Mrs. Landrum's view of the matter, and it was then decided that they would endeavor to obtain a refund of the money which they had paid for the rental of the room ($105.00 U.S.). Mrs. Landrum then requested a refund from Mr. Emrich, who stated that he could not get a refund for them at that time and that they would have to wait until his wife returned from the boat dock. (Evidence p.56) It was about this time that Mr. Emrich informed the party, "Don't think I'm an Archie Bunker. I'm no Archie Bunker." (Evidence p.56). The $105.00 paid by Mrs. Landrum was returned to her when Mrs. Emrich returned to the Inn, some time later.

After receiving return of the money from Mrs. Emrich, Mrs. Landrum and her party went to the boat dock where Mrs. Emrich had been, and commenced to fish,during which time they discussed the incident. Mrs. Landrum stated that she informed the group (Evidence p.57), "That's ridiculous ... this man is American, and I have been coming here for fifteen-sixteen years, and never ran into anything like this from the Canadian people. Here is an American man coming up here to spread hatred." Mrs. Landrum and her party then attended on the Reeve of the Township of Pelee, to complain about the above recounted incident. Mrs. Landrum left a memorandum of the incident with the Reeve (Exhibit 14),

which is dated July 3, 1980. Exhibit 14 was signed by the Complainants and by Mrs. Perry. It states:

> "I Ann Landrum went to Anchor Inn for week end stay. I was told that we had a room only But couldn't eat in Dinning room. Because he did not serve Blacks and she the wife told me to tell my Brother he could not stay either so I ask for my Money Back she the wife said if we got caught sleeping in our car we would pay more than 105.00."

The document was signed by Mrs. Landrum, Mrs. Murray and Mrs. Perry in the presence of the Reeve. Mr. Wallace, who indicated that it was signed in his presence on July 4, 1980. From the covering letter attached to Exhibit 14, it appears that the documents, signed by the two Complainants and Mrs. Perry, was forwared to Mr. Witter by Duncan McTavish, Clerk-Treasurer of the Township of Pelee, on July 7, 1980. This was done with the concurrence of Mrs. Landrum.

Mrs. Landrum testified that the members of her party slept in their automobiles during their stay on Pelee Island, because of their lack of other accommodation. (Evidence p.60). The evidence indicates that there were a number of other hotels and motels on the island, however the Complainants, and the other members of their party only attempted to obtain accommodation at two other establishments, after they left the premises of the Anchor and Wheel Inn. (Evidence p.60)

Exhibit 15 is a letter from Mr. Witter to Mrs. Landrum. The letter asked Mrs. Landrum to supply Mr. Witter with information concerning the complaint of discrimination. In a hand written note, at the bottom of p.2 of the Exhibit 14, Mrs. Landrum stated:

> "We refuse to take the room after being told that we had room only also that we could cook outside in the yard he Mr. Emrich told us we could

> not eat in our room we ask for our Money Back upon return she Mrs. Emrich said we would Pay More than 105.00 if we were caught sleeping in our car."

It is significant that in the handwriting, above referred to, Mrs. Landrum states that her party refused to take the room, "after being told that we had room only also that we could cook outside in the yard ... ." I am satisfied that there were no cooking facilities in the room rented to the Landrum party and that any cooking would have to be performed "outside in the yard." Examining the transcript of the evidence, and having examined the Exhibits in which Mrs. Landrum wrote down her recollections of the relevant events, I am satisifed that the Respondent told her that she could not cook in the room and not that she could not eat in the room. In her Complaint, Mrs. Landrum stated, in the third paragraph:

> "My party and I went down to the Anchor Wheel Inn where I met with Mr. E. Emrich. He took me to a Guest House which is not attached to the main hotel. He showed me an old broken down room and said, 'You can have that room only, and you cannot eat in there, nor in the dining room'."
>
> "He further said, 'If you want to eat, there is a place downstairs outside with a stove, you can fix yourself some coffee'."

I believe that Mr. Emrich was conveying to Mrs. Landrum the advice that she (and her party) could not cook in the room. From the description of the rooms, it is apparent that they were not housekeeping rooms and did not have any cooking facilities; the only cooking facilities being outside of the structure, where a small stove or barbeque was located. This is consistent with the statements contained in Ms. Murray's Complaint.

It is significant that in the Complaints of both Complainants, there is no mention of their having been shown through the main

building. The only reference is to the Respondent having shown Mrs. Landrum the room in the guest house. There was no evidence from Mrs. Landrum that she ever requested a room in the main portion of the motel. According to her evidence, given during the hearing, she was shown through the main building, its rooms and other facilities. She did not testify that she ever asked to be rented a room in the main building. Her evidence was that she was shown through the rooms in the main building and the guest house, and was told by Mr. Emrich that she could have a particular room in the guest house. This is quite a different matter from her being told she would not be permitted to stay in a room in the main portion of the motel. On the evidence, I conclude that the Complainants did not, nor did the other members of their party, request to be rented a room in the main building, although they were shown rooms in that building. I have no reason to believe that any of the rooms in the building where the Complainants were to be accommodated, were significantly different from the one rented to the Complainants, and conclude that they were not being restricted in the choice of a room to be occupied in that building.

My conclusions are consistent with the statement contained in Mrs. Landrum's Complaint of discrimination, where she stated that the Respondent told her: "If you want to eat, there is a place downstairs outside with a stove, you can fix yourself some coffee." I believe that Mrs. Landrum confused the statement made by the Respondent, that there was no place to cook in the room, with a statement that she could not eat in the room. At pp.65 and 66 of the Evidence, Mrs. Landrum testified that Mr. Emrich

showed her the "deep freeze for the meat" in the main building of the hotel and, after showing her the steaks in the freezer, stated: "You can even have steaks if you like." I find it unlikely that Mr. Emrich would offer to sell Mrs. Landrum steaks, if he did not intend her to eat them. While it is conceivable that Mr. Emrich could have told the Complainants and their party that they would have to eat outside of their rooms, the entirety of the evidence satisfies me that he was endeavoring to make it clear that there were no cooking facilities in the room rented to them and that there was to be no cooking conducted in the room. I do not find such evidence to be consistent with an intention on the part of the Respondent to discriminate against the Complainants with respect to the services or facilities available in a place to which the public is customarily admitted, because of race or colour. His statements were more consistent with a desire to prevent cooking in a room that was unsuitable for that purpose. From the evidence, it appears that cooking in the room would constitute a hazardous activity. The building was described as a ramshackle wooden building and I am satisfied that cooking in the room would create a fire hazard.

My conclusion that the Complainants were not denied the opportunity to rent a room at the Inn and thereby were not discriminated against with respect to the services or facilities available at the Inn, contrary to the provisions of the Code, is supported by the evidence of Mrs. Landrum. In response to questions that I asked her, at pp.66-68 of the Evidence, Mrs. Landrum testified that Mr. Emrich showed her through the rooms

in the main building and that he did so on his own volition. Although she stated that Mr. Emrich had no intention of permitting her to rent a room in the main building (Evidence p.67), there was nothing in her evidence which supported such a conclusion. At no time did she or any one in her party indicate that they wished to rent a room in the main building. The evidence did not disclose that they asked for a room in the main building or how much rooms rented for in the main building. After Mr. Emrich is suppose to have shown Mrs. Lumdrum and her party a room in the other building, which she described as a rundown building, and informed them that, "this is your room" (Evidence p.60), there was no evidence of any request to rent a room in the main building.

I am also affected by the answers to the questions set out in Exhibit 15. Mr. Witter enclosed a series of questions in that Exhibit, which were answered by Mrs. Landrum. There is nothing in the answers to these questions, or in the written addendum provided by Mrs. Landrum, annexed to Exhibit 15, which supports a conclusion that either of the Complainants was denied accommodation in the motel. There was some suggestion, in question 10, that Mrs. Landrum's brother was denied accommodation because he was black. Question 10 reads, "Did the owners deny your brother accommodation after finding out that he was black?" The answer to this question is "yes". At the hearing, there was no evidence which would enable me to conclude that Mrs. Landrum's brother was denied accommodation because he was black, or that he had been denied a room. At p.2 of the written addendum to Exhibit 15, there is a statement attributed to Mrs. Emrich that, "you can tell your

brother that he can't have room either if he sent the money she would send it back ...". There was no elaboration from Mrs. Landrum concerning this incident, when she testified at the hearing. On the evidence as a whole, I am unable to find sufficient evidence upon which to base a finding that the Complainants were denied accommodation at the motel because of their race and colour.

Exhibit 13 is a letter to Ms. Murray, similar to Exhibit 14. In a hand written attachment, Ms. Murray stated that Mr. Emrich had told her party that they would not be permitted to eat in the dining room because they were black and that he expected some white people that evening. The same statement is contained, in handwriting, at the bottom of p.2 of Exhibit 13, without any reference to any denial of either accommodation or a denial of the right to eat in the room that was rented to them

The evidence was clear that there were dining facilities available in the main building and that the Complainants were informed by Mr. Emrich that they would not be permitted to eat in the main dining room because they were black and that there was no other reason given for their being denied access to the dining room facilities.

Mr. Bader acknowledged that his principal argument was based on the denial of the right to use the dining room facilities, and I did not understand him to be pursuing a claim based on denial of the use of any other accommodation, services or facilities at the Anchor and Wheel Inn. He acknowledged that the Complainant had been rented a room (Evidence p.79), but submitted that they were not permitted to "eat in the dining facilities." I am unable

to accept Mr. Bader's submission (Evidence p.79) that the Complainants were only given the right to rent a room in the second building and not in the main building. At no time was there any evidence demonstrating that the Complainants (or anyone else in their party) had asked to rent a room in the main building. I cannot understand why the Complainants would be shown through the main building, including the guest rooms located there, if the Respondent's intention was to restrict them to rooms in the other building.

At p.82 of the Evidence, Mr. Bader acknowledged that the case that he intended to make was with respect to a denial of "all the facilities". He later clarified this to mean, "... its only with respect to the dining facilities." He reiterated this position at p.83 of the Evidence: "[Yes], and thats ... the ... thrust of the case. It's in the denial of the dining facilities, which may be accommodations ...". As I have already indicated, the evidence is clear that the Complainants were denied access to the dining facilities because of their race or colour.

Mr. Bader filed an affidavit from the Reverend Hugh Brownlee, of the City of Dayton, County of Montgomery, State of Ohio. Reverend Brownlee deposed to the fact that he was the Rector of the Christ Episcopal Church in Dayton, Ohio. He deposed further that he was, on or about the 15th day of July, 1981, together with his wife and friends, Mr. and Mrs. Richard Giffels of Cleveland, Ohio, on vacation on Pelee Island. In praragraph three of his affidavit, he deposed that his party stopped at the Anchor and Wheel Inn and met with Mr. and Mrs. Emanuel Emrich. At that time,

he asked if he and his party could return and have dinner at the Inn and was informed by Mr. Emrich that they could return for dinner and that Reverend Brownlee was, in fact, encouraged to do so.

In paragraph four of his affidavit, Reverend Brownlee further deposed to the fact that he and his party returned to the Anchor and Wheel Inn and were given a tour of the premises.

In paragraph five of his addidavit, he stated that neither he, nor any member of his party, was a member of the "Anchor and Wheel Inn and/or Pelee Island Yacht Club". In paragraph six of his affidavit, he stated that no member of his party was required to be a member of, or apply for membership in the Anchor and Wheel Inn and/or Pelee Island Yacht Club. In paragraph seven of his affidavit, Reverend Brownlee stated that he was unable to attend the hearing on the dates scheduled because of his position with the Christ Episcopal Church and commitments related to his position.

In both complaints the claim of discrimination is the same:

> "I am a black American and believe that I have been denied the services or facilities available in a place to which the public is customarily admitted, and was discriminated against with respect to services or facilities available in a place to which the public is customarily admitted, because of my race and colour. I understand that this contravenes Sections 2(1)(a) and 2(1)(b) of the Ontario Human Rights Code, R.S.O. 1970 c.318, as amended."

In his representations, Mr. Bader, quite properly, referred to the provisions of the 1980 Ontario Human Rights Code, R.S.O. 1980 c.340, ss.2(1).

(a) and (b). The complaints were filed on the 22nd day of September 1980, and at that time the 1980 Code was in force and the sections relied on were as follows:

> 2(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall (a) deny to any person or class of person the accommodation, services or facilities available in any place to which the public is customarily admitted; or
>
> (b) Discriminate against any person or class of person with respect to the accommodation, services or facilities available in any place to which the public is customarily admitted, because of the race, creed, colour, sex, marital status, nationality, ancestry or place of origin of such person or class of persons or of any other person or class of persons."

Sections 2(1)(a) and 2(1)(b) were in the form above set out at the time of the filing of the Complaints. I am satisfied, on the evidence, that the dining room in the motel was a "place to which the public is customarily admitted". I am also satisfied that the Complainants were denied the services or facilities of the dining room in the main building of the Anchor and Wheel Inn, because of their race and colour and were further discriminated against with respect to the services or facilities, being the dining room available in the Inn, because of their race or colour. I accept the evidence of Mrs. Landrum, that she and Ms. Murray were denied permission to use the services or facilities of the dining room because they were black. Such a statement represents a violation of s.2(1)(a) and 2(1)(b) of the 1980 Code, above set out. By his actions, the Respondent intended to discriminate against the Complainants. His reasons for denying the services and facilities in the dining room to the Complainants and for discriminating against them with respect to the dining room

services and facilities were because of their race and colour.

From the evidence of the Complainant, Anne Landrum (Evidence pp.63-64), the actions of the Respondent made her angry and humiliated her. Those actions also caused the other Complainant, Daisy Murray, to become upset and frightened. Because of the actions of the Respondent, the Complainant, Daisy Murray informed the Complainant, Anne Landrum that she would not return to Pelee Island.

Mr. Bader requested the following relief (Evidence pp.85-89):

1. A written apology from the Respondent, directed to the Complainants.
2. Advertisement in a newspaper by the Respondent, stating that he upholds the provisions of the Code and that he welcomes all guests, regardless of their race, creed, colour, sex, marital status, nationality, ancestry or place of origin. Mr. Bader suggested that the advertisement be placed in a newspaper such as the Windsor Star, and as well, as the Complainants are American, in a Detroit newspaper and in a local newspaper serving Pelee Island.
3. The posting on the premises of the Anchor and Wheel Inn, of a declaration of Management Policy Cards, provided by the Commission, in which cards the public is made aware that the owner of the business premises conducts his operation in compliance with the policies of the <u>Ontario Human Rights Code</u>.

4. That a general damages award be made in favour of each Complainant in the amount of $500.00.

I am satisfied, from Mrs. Landrum's evidence, that both Complainants experienced feelings of embarrassment and distress as a result of the incident in question. I am also satisfied that the Complainants experienced a feeling of disappointment in their expecations as to how black people are treated in Canada. At the same time, I do not consider the fact that the Respondents chose to sleep in their automobiles during their three day stay on Pelee Island, as being entirely the fault of the Respondent. I do not blame them for refusing to remain at the Anchor and Wheel Inn, however, it appears that there were a number of other guest accommodations on Pelee Island. There was no sufficient excuse furnished explaining the failure of the Complainants to make greater attempts to obtain other accommodations.

I also conclude that some of the distress caused the Complainants had more to do with the general behaviour of the Respondent, apart from those actions which represented breaches of the Code. At several junctures during the hearing, Mrs. Landrum referred to the behaviour of the Respondent, in a way that indicated the different bases for the Complainants' responses to his actions, some of which actions, while offensive, were outside the ambit of the Code. For example, at p.89 of the Evidence, Mrs. Landrum referred to the Complainant as "a very peculiar person. I don't understand his motives." Although Mrs. Landrum felt she had no choice as to where she would stay in the motel,and stated (Evidence p.89),"We

did not have that choice. He just showed us. He didn't say we could have a room here, or a room there", I could not find that the evidence would enable me to conclude that the acts of discrimination committed by the Respondent went beyond the refusal to permit the Complainants to use the dining room in the main building of the Inn. Mrs. Landrum's evidence does not disclose that she wished to rent a room in the main building of the Inn. In all of the circumstances I would award each Complainant $300.00 for compensation for the elements of mental suffering set out above.

I also note that the evidence of Mrs. Landrum, as to the mental suffering experienced by herself and by Ms. Murray, is not entirely consistent with their immediate response to the Repondent's actions. It would be expected that, if the Complainants suffered injury to their feelings to the extent testified to by Mrs. Landrum, they would have immediately left the premises of the Anchor and Wheel Inn. Instead, they went "down to the dock" to fish. While I am satisfied that the Complainants did suffer genuine mental suffering as a result of the acts of the Respondent amounting to a violation of the Code, I have also considered the above evidence in arriving at an amount of damages to be awarded to the Complainants.

Concerning the request for an apology: although a forced apology is rarely meaningful, the evidence disclosed that the Respondent demonstrated an attitutde inconsistent with the spirit of the Code. I see no prospect that the Respondent will apologize to the Complainants unless he is ordered to do so. Accordingly, I order him to send each of the Complainants such an apology as was requested by Mr. Bader.

I also conclude that this is a matter where an undertaking by the Respondent to comply with the Ontario Human Rights

Code is appropriate and I order that he issue a letter of undertaking that he will comply with the Code in the future.

I also order that the Respondent should place an advertisement in the following newspapers: The Windsor Star, The Detroit Free Press and the Leamington Post and News, stating that the Respondent upholds the principles of the Ontario Human Rights Code and that he welcomes all guests irrespective of race, creed, colour, sex, marital status, nationality, ancestry or place of origin, at the Anchor and Wheel Inn on Pelee Island.

ORDER

These matters coming on for hearing on the 23rd day of October 1984, before this Board of Inquiry, pursuant to my appointment by Robert Elgie, Minister of Labour, in the presence of Counsel for the Commission and in the presence of the Complainant, Anne Landrum and upon it being demonstrated that notice in accordance with the Statutory Powers Procedures Act was served on the Respondent, which notice, inter alia, informed the Respondent that this matter might be proceeded with in his absence, and upon hearing evidence adduced by Anne Landrum and by M. Witter, and what was alleged by Commission Counsel and by the Complainant Anne Landrum, and upon finding that the Complaints were substantiated by the evidence.

IT IS ORDERED THAT:

(a) The respondent pay to each of the Complainants the sum of $300.00,as compensation for injured feelings.

(b) The Respondent keep posted a placard supplied by the Ontario Human Rights Commission,setting our the principles of the Ontario Human Rights Code,in a prominent place near the entrance of the Anchor and Wheel Inn.

(c) The Respondent provide a letter of apology to each of the Complainants.

(d) The Respondent provide a letter to the Ontario Human Rights Commission undertaking that he will in future comply with the Ontario Human Rights Code, at the Anchor and Wheel Inn, operated by him.

(e) That the Respondent place an advertisement in the following newspapers:

i. The Leamington Post and News

ii. The Windsor Star

iii. The Detroit Free Press

indicating that, as Resident Manager of the Anchor and Wheel Inn, he will not deny to any person or class of persons accommodation, services or facilities available at the Inn or discriminate against any person or class or persons with respect to the accommodation, service or facilities available at the Anchor and Wheel Inn, because of the race, creed, colour, sex, marital status, nationality, ancestry or place of origin of such person or class of persons or of any other person or class or persons.

(f) The Respondent send the letter of apology, the letter of undertaking, and the draft advertisment, referred to above in paragraphs (c), (d) and (e), to Mr. M. W. Bader, Counsel for the Commission, at his office, Crown Law Office, Civil Law, 17th Floor, 18 King Street East, Toronto, Ontario M5C 1C5.

DATED AT London, Ontario

this 10thday of December, 1984.

M. R. Gorsky
Board of Inquiry